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In re Application of
ROLF LARSSON
Application No.: 09/582,003
PCT No.: PCT/SE98/02302
Int. Filing Date: 15 December 1998
Priority Date: 19 December 1997
Attorney Docket No.: 11412
For: WELDING APPARATUS

DECISION ON PETITION

This is a decision on applicants' "Petition Under 37 CFR 1.137(b)" requesting the revival of abandoned application. The petition was filed on 18 April 2002 in the United States Patent and Trademark Office (USPTO). However, the petition is being treated as a petition under 37 CFR 1.182 for reasons explained below. A \$130 petition fee is required and will be charged to applicant's deposit account per their authorization.

BACKGROUND

On 12 July 2000, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period were required. A one month period of time was set to respond to the Notification.

On 11 January 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants indicating that applicants had failed to respond to said Notification of Missing Requirements.

Applicant submitted a communication on 23 January 2002 and a petition under 37 CFR 1.182 on 26 February 2002, requesting withdrawal of the holding of abandonment along with a copy of the declaration, assignment and canceled check in the amount of \$280 allegedly deposited on 01 September 2000 in the USPTO.

In his 23 January 2002 and 26 February 2002 submissions, applicant alleged that he mailed an executed declaration on 01 September 2000. However, the 01 September 2000 submission was not found in the application file. The 23 January 2002 submission included a

copy of the allegedly earlier filed declaration but did not include "a copy of the date-stamped postcard receipt" for 01 September 2000.

In a decision mailed on 26 March 2002, applicant was advised that without the 01 September 2000 submission, the application must be considered abandoned for failure to timely respond to the Notification of Missing Requirements. Applicant was further advised that in requesting withdrawal of the abandonment of the application, he must file a petition under 37 CFR 1.181 providing a true copy of the USPTO date-stamped itemized postcard receipt indicating the filing of the declaration on 01 September 2000 along with a copy of the declaration as filed.

Thereafter, in a telephone conversation with the undersigned, attorney of record Keith Orum indicated that he believed that the declaration had been inadvertently directed to another of the firm's applications, 09/582,005. A review of that application file did indeed result in locating the missing declaration, which was mailed on 01 September 2000 and received in the USPTO on 05 September 2000. The "Response to Notification of Missing Requirements and Assignment" referenced application no. 09/582,005; however, attached to the response was a copy of the Notification of Missing Requirements for application no. 09/582,003 and a declaration directed to the specification attached hereto and claiming benefit under 35 U.S.C. 120 to PCT/SE98/02390. A specification was not attached to the declaration. A request for a one month extension of time was requested, which is granted. A review of the finance records for application 09/582,005 indicated that the \$130 surcharge, \$110 extension of time fee and \$40 assignment fee were paid.

On 18 April 2002, applicant filed the instant petition to revive the abandoned application under 37 CFR 1.137(b), which is treated as a petition under 37 CFR 1.182 to correct the application number on the 05 September 2000 filing.

DISCUSSION

A review of the USPTO application file for 09/582,003 reveals that Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants on 12 July 2000.

As indicated above, a review of the finance records for 09/582,005 indicates that the surcharge for filing the declaration after the thirty month period (\$130) was paid on 05 September 2000. Upon a review of the application file for 09/582,005, a response to the Notification of Missing Requirements for 09/582,003 was located along with an executed declaration. The declaration was dated-stamped 05 September 2000 by the USPTO. Accordingly, it is appropriate grant applicant's petition under 37 CFR 1.182 and to docket the declaration in 09/582,003 with a deposit date of 05 September 2000.

Thus, the renewed petition under 37 CFR 1.137(b) is considered moot, as the declaration, executed by the inventor and submitted on 05 September 2000 and request for extension of time, is considered responsive to the 12 July 2000 Notification of Missing Requirements. The \$1280 fee for a petition to revive under 37 CFR 1.137(b) is refunded to applicant's deposit account.

The declaration submitted on 05 September 2000 indicates that it is directed to the "attached specification"; however, no specification was attached to the declaration nor was U.S. application number 09/582,003 referenced. Moreover, the declaration references the wrong PCT application number (PCT/SE98/02390). The declaration is unacceptable under 37 CFR 1.497(a), which requires that the declaration identify the specification to which it is directed.

CONCLUSION

For the reasons stated above, the petition to revive under 37 CFR 1.137(b) filed 18 April 2002 in the above-captioned application is **DISMISSED AS MOOT**.

The 11 January 2002 Notification of Abandonment (Form PCT/DO/EO/909) is hereby **VACATED**.

The petition under 37 CFR 1.182 is **GRANTED**. However, as discussed above, the declaration as submitted is unacceptable under 37 CFR 1.497.

It is noted that the time within which to respond to the Notification of Missing Requirements (Form PCT/DO/EO 905) mailed on 12 July 2000 has expired. Applicant must correct the above-noted defects including the furnishing of an oath/declaration in compliance with 37 CFR 1.497 within **ONE (1) MONTH** from the mail date of this Decision. No extensions of time may be obtained under 37 CFR 1.136(a). Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497."

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Request Under 37 CFR 1.497" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

The application will be held in the PCT Legal Office to await applicant's response.



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